

**United States Department of Labor  
Employees' Compensation Appeals Board**

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**B.L., Appellant**

**and**

**U.S. POSTAL SERVICE, PROCESSINIG &  
DISTRIBUTION CENTER, Atlanta, GA,  
Employer**

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**Docket No. 16-1874  
Issued: March 15, 2017**

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:

CHRISTOPHER J. GODFREY, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
VALERIE D. EVANS-HARRELL, Alternate Judge

**JURISDICTION**

On September 22, 2016 appellant filed a timely appeal from an August 24, 2016 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

**ISSUE**

The issue is whether OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 20, 2016, as she no longer had residuals or disability causally related to her accepted employment-related injuries.

**FACTUAL HISTORY**

On September 23, 2014 appellant, then a 59-year-old mail handler, filed an occupational disease claim (Form CA-2) alleging that she had pain in both of her feet due to her federal

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

employment. She became aware of her condition on November 13, 2012 and related it to factors of her federal employment on August 26, 2014.

On October 9, 2014 OWCP accepted appellant's claim for bilateral heel spur and bilateral plantar fasciitis. Appellant stopped work on March 14, 2015. OWCP authorized a right plantar fascia release performed on April 22, 2015 by Dr. Radhakrishnan V. Nair, a Board-certified orthopedic surgeon. It paid wage-loss compensation and medical benefits.

On May 18, 2015 Dr. Nair released appellant to return to regular-duty work on that date. Appellant has not returned to work.

In a medical report dated January 25, 2016, Dr. Jay B. Bender, an attending Board-certified physiatrist, examined appellant and diagnosed bilateral plantar fasciitis. He noted that she was currently incapacitated.

On March 7, 2016 OWCP referred appellant to Dr. Alexander N. Doman, a Board-certified orthopedic surgeon, for a second opinion examination to determine whether she continued to have residuals or disability due to the accepted employment-related conditions. In a March 23, 2016 report, Dr. Doman examined appellant and noted that the accepted work-related conditions had resolved. He advised that she was capable of performing her date-of-injury position without limitations.

On April 13, 2016 OWCP determined that there was a conflict in the medical opinion between Dr. Bender and Dr. Doman as to whether appellant had any continuing residuals or disability due to the accepted employment injuries.

By letter dated April 14, 2016, OWCP referred appellant, together with a statement of accepted facts (SOAF),<sup>2</sup> the medical record, and a list of questions, to Dr. Howard B. Krone, a Board-certified orthopedic surgeon, for an impartial medical examination. In a June 2, 2016 report, Dr. Krone reviewed the SOAF and medical record. He examined appellant and found that she had absolutely no problems standing or walking. There was no evidence of any limp. Appellant had a well-healed three-inch scar over the medial aspect of her right heel with no swelling or tenderness over the scar. There was also no tenderness at the insertion of the plantar fascia or over the plantar fascia itself. An examination of the left foot was completely normal. Both feet were plantigrade and sensation was intact. Range of motion of the ankle and subtalar joints was normal. In response to queries from OWCP, Dr. Krone related that objective findings showed no abnormalities on evaluation of the right or left foot. He further related that residuals of the accepted employment injuries had resolved. Dr. Krone maintained that appellant was capable of performing her regular date-of-injury work duties. He also maintained that she had no disability.

On July 5, 2016 OWCP provided appellant with a notice of proposed termination of her wage-loss compensation and medical benefits because she no longer suffered residuals or disability causally related to the accepted employment-related injuries. It determined that the special weight of the medical evidence rested with the June 2, 2016 impartial medical report of Dr. Krone. Appellant was given 30 days to submit additional evidence or argument.

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<sup>2</sup> The SOAF noted the accepted injuries, duties of appellant's date-of-injury position, and her medical treatment.

In reports dated April 19 to July 12, 2016, appellant's chiropractors, Dr. Alix Snyder, Dr. Kimberly Wyatt, and Dr. S. Ken Smith, provided findings on physical examination and diagnosed bilateral calcaneal spurring and bilateral plantar fasciitis.

In a July 18, 2016 report, Dr. Vidyadhar S. Chitale, a Board-certified neurosurgeon, noted appellant's history, listed findings on physical examination, and provided an impression of plantar fasciitis and heel spurs. A July 18, 2016 left foot magnetic resonance imaging (MRI) scan report from Dr. Samir Chande, a Board-certified radiologist, revealed an impression of a minimal intermediate signal seen within the plantar fascia at its attachment upon the calcaneus which was suggestive of very mild plantar fasciitis and small ankle joint effusion.

In an October 7, 2015 prescription, Dr. Bender ordered an additional MRI scan of the bilateral feet and heels. In a July 26, 2016 prescription, he ordered physical therapy to treat appellant's bilateral plantar fascial fibromatosis.

By decision dated August 24, 2016, OWCP terminated appellant's wage-loss compensation and medical benefits, effective August 20, 2016. It found that the weight of the medical evidence rested with Dr. Krone who reported that she no longer had any residuals or disability stemming from the accepted employment injuries.

### **LEGAL PRECEDENT**

Once OWCP accepts a claim, it has the burden of proof in justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to his or her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.<sup>3</sup> Its burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup>

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.<sup>5</sup> The implementing regulations state that, if a conflict exists between the medical opinion of the employee's physician and the medical opinion of either a second opinion physician or an OWCP medical adviser, OWCP shall appoint a third physician to make an examination. This is called a referee examination and OWCP will select a physician who is qualified in the appropriate specialty and who has no prior connection with the case.<sup>6</sup> In situations where there exist opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the

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<sup>3</sup> *Jason C. Armstrong*, 40 ECAB 907 (1989).

<sup>4</sup> *See Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

<sup>5</sup> 5 U.S.C. § 8123(a).

<sup>6</sup> 20 C.F.R. § 10.321.

purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.<sup>7</sup>

### ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 20, 2016.

OWCP accepted that appellant sustained bilateral heel spur and bilateral plantar fasciitis as a result of her repetitive work duties. It subsequently determined that a conflict in medical evidence had been created between the opinions of Dr. Bender, an attending Board-certified physiatrist, and Dr. Doman, an OWCP referral Board-certified orthopedic surgeon, regarding whether appellant had any continuing residuals or disability causally related to the accepted employment injuries. OWCP then properly referred her to Dr. Krone, also Board-certified in orthopedic surgery, for an impartial evaluation.

Dr. Krone's June 2, 2016 report noted that he had reviewed the SOAF and the medical record. He found that appellant had no residuals or disability due to the accepted injuries. Dr. Krone opined that she could perform her regular date-of-injury work duties. He documented normal findings upon examination. Dr. Krone noted that appellant had no problems standing or walking or any evidence of a limp. On examination of the right foot, he found no swelling or tenderness over the scar and no tenderness at the insertion of the plantar fascia or over the plantar fascia itself. Dr. Krone advised that appellant had a completely normal left foot examination. He found that both feet were plantigrade and that sensation was intact. Dr. Krone also found normal range of motion of the ankle and subtalar joints. He concluded that there were no objective findings of any abnormalities on evaluation of the right or left foot.

The Board finds that Dr. Krone provides a comprehensive, well-rationalized opinion in which he clearly finds that residuals of appellant's accepted conditions have resolved and that she can return to her preinjury job. Dr. Krone's opinion is entitled to the special weight accorded an impartial examiner and constitutes the weight of the medical evidence.<sup>8</sup>

The remaining evidence submitted prior to the termination of compensation is insufficient to overcome the weight accorded to Dr. Krone as an impartial medical specialist regarding whether appellant had any remaining work-related residuals or disability.

Dr. Chitale's July 18, 2016 report found that appellant had plantar fasciitis and heel spurs, but did not offer an opinion on the relevant issue of whether appellant had employment-related disability due to the accepted work-related conditions. The Board has found that medical evidence that does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship.<sup>9</sup> Likewise, Dr. Chande's July 18, 2016 left foot MRI scan report and Dr. Bender's July 26, 2016 physical therapy order did not

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<sup>7</sup> See *M.W.*, Docket No. 16-0959 (issued October 6, 2016); *James P. Roberts*, 31 ECAB 1010 (1980).

<sup>8</sup> See *Sharyn D. Bannick*, 54 ECAB 537 (2003).

<sup>9</sup> *K.W.*, 59 ECAB 271 (2007); *A.D.*, 58 ECAB 149 (2006); *Jaja K. Asaramo*, 55 ECAB 200 (2004); *Michael E. Smith*, 50 ECAB 313 (1999).

provide an opinion supporting that appellant has ongoing disability due to the accepted work-related conditions.

The April 19 to July 12, 2016 reports from appellant's chiropractors, Dr. Snyder, Dr. Wyatt, and Dr. Smith, addressed appellant's bilateral foot conditions. However, these reports are of no probative medical value as the Board has held chiropractic opinions to be of no probative medical value on conditions beyond the spine.<sup>10</sup>

The Board, therefore, concludes that Dr. Krone's opinion that appellant had recovered from the employment injuries without residuals is entitled to the special weight accorded an impartial medical examiner<sup>11</sup> and the additional medical evidence of record is insufficient to overcome the weight accorded him as an impartial medical specialist or to create a new medical conflict regarding whether she had residuals or disability due to her accepted conditions.<sup>12</sup> OWCP, therefore, properly terminated her compensation benefits on August 20, 2016 based on Dr. Krone's opinion.<sup>13</sup>

### **CONCLUSION**

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation and medical benefits, effective August 20, 2016, as she no longer had residuals or disability causally related to her accepted employment-related injuries.

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<sup>10</sup> *George E. Williams*, 44 ECAB 530 (1993). See 5 U.S.C. § 8101(2). Section 8101(2) of FECA provides that physician includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law. The term physician includes chiropractors only to the extent that their reimbursable services are limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist.

<sup>11</sup> See *supra* note 6.

<sup>12</sup> *Alice J. Tysinger*, 51 ECAB 638 (2000); *Barbara J. Warren*, 51 ECAB 413 (2000).

<sup>13</sup> *Manuel Gill*, 52 ECAB 282 (2001).

**ORDER**

**IT IS HEREBY ORDERED THAT** the August 24, 2016 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 15, 2017  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board